Proposals to reduce corruption in Hungary

Summary in English*

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* The full study in Hungarian: **Javaslatok a korrupció visszaszorítására Magyarországon,** https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korrupci%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf

Executive summary

By preparing this study, the Transparency International Hungary Foundation [Transparency International Magyarország Alapítvány] ('TI Hungary') undertakes to make recommendations for improving the condition of democracy in Hungary, strengthening the rule of law and substantially reducing the extent of corruption.

During the past years, TI Hungary has pointed out in a number of analyses[1] and studies[2] that the processes resulting in the transformation of the public institution system had been key to the nature and extent of both the rule of law and corruption in Hungary. Our conviction in this regard is unchanged. We shall therefore begin the evaluation of the rule of law and corruption by again describing the re-creation of the space occupied by public power. In retrospect, looking back at the nearly eight years that have passed since the 2010 parliamentary elections, we can state that the parliamentary majority with constituent powers, which the Government held until the 2015 parliamentary by-elections, has proved decisive in terms of the quality of the public institution system. Relying on this extraordinary legislative authorisation, the Government almost completely eliminated the professional and organisational autonomy of the state institutions independent of it.

Consequently, the system of democratic checks and balances is broken and the institutions forming part of it have lost their capacity for scrutiny to a very significant extent. The space occupied by public law not only impaired the operation of the state governed by the rule of law but also calls into question the enforcement of the separation of powers. All this has resulted in public power being captured[3] - although the 'inverted' version of state capture has been implemented in Hungary.[4] It is not that influential economic interest groups have taken control of a weak public power; rather, the non-transparent cooperation of very strong public power and the business circles close to it ('oligarchs') has become characteristic. Taking public power into private possession in this way has been both cause and effect of the destruction of institutions undertaken under the system of democratic checks and balances. It was a cause to the extent that the clique-like exercise of political power does not tolerate institutional controls, and an effect because the weakening of the controls has allowed the exercising of state power to become less and less transparent and accountable.

The effects of state capture also include the phenomenon that corruption in Hungary appears not as a hindrance to exercising state power but as a method used by the state. Corruption is a tool in the hands of those holding public power; when it is used, some of the assets can be distributed on

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[1] Including, but not limited to: The Corruption Perception Index and the characteristics of corruption in Hungary in 2016 (https://transparency.hu/wp-content/uploads/2017/01/A-Korrupcio-Erzekelesi-Index-es-a-korrupcio-jellemzoi- Magyarorszagon-2016-ban-1.pdf); Democratic Backsliding and Economic Performance – 'Building Unity and Support for Democratic and Free Market Values in Central and Eastern Europe' – Country Report on Hungary (https://transparency.hu/wp-content/uploads/2017/05/democratic_backsliding_country_report.pdf); Joint Submission to the UN Universal Periodic Review 25th Session of the UPR Working Group (https://transparency.hu/wp- content/uploads/2015/09/Joint-Submission-to-the-UN-Universal-Periodic-Review.pdf).

[2] Including, but not limited to: Martin, József Péter and Miklós Ligeti: The Lobbying Context: Party State Capture and Crony Capitalism, in: Bitonti, A. and P. Harris (eds.): *Lobbying in Europe.* Pelgrave Macmillan, 2017; pp. 177-193; Ligeti, Miklós: Corruption, in: Jakab, András and György Gajduschek: *State of the Hungarian legal system.* MTA TK JTI, 2016; pp. 727-757; Bartha, Attila: *Lifting the Lid on Lobbying: National Report of Hungary – Lobbying in an Uncertain Business and Regulatory Environment* (https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf).

[3] See, for example: Ligeti, Miklós: *Corruption*, in: András Jakab and György Gajduschek: *State of the Hungarian legal system*, MTA TK JTI, 2016, pp. 747.

[4] For more details, see, for example: Martin, József Péter: Continuity or Disruption? Changing Elites and the Emergence of Cronyism after the Great Recession – the Case of Hungary. *Corvinus Journal of Sociology and Social Policy* Vol. 8 (2017) 3S, pp. 255-281, 256, 257, 246 and 247; Martin, József Péter and Miklós Ligeti: The Lobbying Context: Party State Capture and Crony Capitalism, in: Bitonti, A. and P. Harris (eds.): *Lobbying in Europe*, Pelgrave Macmillan, 2017; pp. 177-193.

the basis not of performance but of loyalty. The fact that loyalty has become the primary consideration helps ensure the irreplaceability of those who hold power. In this regime, corruption is no longer only an unfair advantage achieved by breaking the rules but the direct and principal consequence of bad rules.

Smashing corruption requires that a state organisation be established to implement the separation of powers and the values of the rule of law. Its success depends primarily on building institutions, yet the approach by the political elite is more or less equally important. Those who hold political power must respect the professional autonomy of the organisations of state power: not only of those that are constitutionally separated from executive power, but also of the institutions overseen by the government, such as the tax authority, the police, the government offices and other government bodies. The rule of law, democracy and market economy can prevail in the long term if those in power govern the country in a self-restricting way, always respecting the written and unwritten rules, without withdrawing or limiting acquired rights.

In order to achieve these goals, it is necessary to restore the rule of law and to rebuild the constitutional structures. If the political conditions are fulfilled for this purpose (discussion of which is not the subject of this study), a new Constitution will need to be drawn up because the governments in office since 2010 and their parliamentary majority have created, by adopting the Fundamental Law and cardinal laws, a public institutional system that is not suitable for controlling executive power and in the majority of cases does not even aim to carry out this task. In the view of TI Hungary, the amended or new Constitution will have to reflect the ideological diversity of Hungarian society.

In Hungary, almost all state institutions have come under the control of leaders placed in office via questionable appointment or election. These individuals have greatly contributed to the erosion of the rule of law, yet the rule of law cannot be established within an institutional framework which has been established to demolish the rule of law with their participation.

A small number of such leaders have no business being in the new rule-of-law-based system. Their dismissal as soon as possible, by means of the rule of law, is therefore especially important. We should stress that TI Hungary recommends the dismissal of leaders who have been placed in office through questionable appointment or election not because of party-political considerations. A change in the political composition of a government is never a reason in itself for replacing leaders placed in office during the term of the previous government. These public leaders must not be replaced simply because they have been appointed by the governing parties in power since 2010. Their replacement is inevitable because they were appointed not in order to strengthen and efficiently operate the rule of law and to respect democratic checks and balances but to eliminate control over the government currently in power, and they often act accordingly. In other words, they have been on a mission based on partisan politics, with no regard for public interest or strengthening the rule of law.

In practice, not all the conduct of leaders placed in office through questionable appointment or election can be regarded as unsatisfactory, so that normative solutions must be combined with individual consideration so as to avoid a wave of replacements paralysing the administration from operating and turning into some kind of political witch hunt.

In our study, the institutional approach takes precedence. We make detailed recommendations for transforming the organisation and operation of the Constitutional Court, the judicature, the public prosecutor’s offices, the National Bank of Hungary and the Hungarian Competition Authority. We are aware that effectively separating powers and reviving the rule of law in Hungary, which

now appears defunct, can be achieved only to a certain extent by amending the regulations. The implementation of the rules depends, to at least the same extent, on the attitude and democratic commitment of the governing elite and the ability of civil society and the media to suitably effect and monitor the governing elite.

Our study has five parts. As a first step, we summarise how the state institutions, which are of particular importance for the democratic control of executive power, were thrown into disorder. The implementation of the destruction of institutions is described through the examples of the Constitutional Court, the judicature and the public prosecutor's offices. As a second step, we summarise our findings about corruption in Hungary and describe the practice of corruption in three specific cases: the foundations of the National Bank of Hungary, the subsidisation of spectator team sports financed from corporate tax, and Hungarian residence bonds. As a third step, we show the main relationships between three high-priority areas of public finance management: public procurement, the use of European Union funds, and the financing of political parties and their campaigns. As a fourth step, the status of the freedom of information and the freedom of the press as a means used for controlling public power is described. Finally, as a fifth step, we make recommendations for, firstly, restoring the rule of law and smashing systemic corruption, and secondly, taking the measures required to call individuals to account, due to individually-identifiable corrupt conduct.

5.2.6 Freedom of information

In order to increase accessibility to information of public interest, we recommend the implementation of the minimum requirements for the freedom of information devised jointly by Átlátszó.hu [Transparent.hu], K-Monitor, the Association for the Rights to Freedom [Társaság a Szabadságjogokért] and TI Hungary[5]. With this in mind, all restrictions adopted since 2013, which make access to information of public interest difficult or impossible, must be lifted[6] . The various organisations that do not exercise public power but use public funds (for example, political parties and companies belonging to the national wealth and those receiving funds from the European Union or state funds through public procurement) must also be forced to disclose information relating to the public funds managed by them.

With respect to classifying information of public interest and classifying information as secret on the basis of national security considerations, a possibility must be created for judicial review on the merits. As a solution, the possibility of withholding information of public interest for national security considerations might be eliminated, to be replaced by classifying information of public interest, and in respect of the latter, the possibility of courts reviewing the content would apply.

With respect to publicising information of public interest, proactive publicity must be made standard so that the organisations which are obliged to do so must publish all information of public interest managed by them on their websites, not only as a result of requests for information of public interest but automatically and on their own initiative. Stringent sanctions must be imposed on institutions which breach the obligation to disclose information of public interest, for example, by amending the currently-applicable provision of the Criminal Code (misuse of information of public interest) in such a way that it also makes the head of the official organisation concerned liable if the conduct involving the misuse of information of public interest took place in their organisation due to their omission.

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[5] Minimum of the freedom of information (https://transparency.hu/wp-content/uploads/2015/10/A-civil-inform%C3%A1ci%C3%B3szabads%C3%A1g-minimumk%C3%B6vetelm%C3%A9nyei.pdf).
[6] See footnote No 72.

In order to increase the public nature of information of public interest, it is not sufficient to return to the basis which existed in 2012. In addition to increase the scope of the obligation to publish information and bring proactive forms of publicity to the fore, the institutional system of the freedom of information must also be strengthened. Instead of the National Authority for Data Protection and Freedom of Information 'conceived in sin', a parliamentary ombudsman must be put in charge of the oversight of data protection and publicity. We recommend that the new ombudsman in charge of the freedom of information be selected by applying the application and publicity requirements recommended for Constitutional Court judge candidates.

5.2.7 Freedom of the press

TI Hungary starts from the principle that the conditions for creating a diverse media space will be ensured during the new constitutional process, by contrast with the current situation. In this case, regulating the media must also be placed on new foundations. We might also mention the media authority and public media among the list of institutions which are to limit the powers of the government. Their autonomy and independence from the government must be restored forthwith.

In the case of newspapers, which have been placed in an advantageous position by the crony state capitalist regime, it is likely that, under real market conditions, there will simply be no demand for a number of media (Magyar Idők, 888.hu, Lokál, Ripost, etc.), so they may decide to cease operations sooner or later, probably within a few months. There may be a few exceptions from this general rule though: firstly, local and county newspapers, which are in a monopolistic or near-monopolistic position locally, making it difficult or impossible to create competition in the market for them; and secondly, Origo.hu, which has the highest number of visitors in the online market and, perhaps surprisingly, whose leading position has not been shaken even by the political repositioning of the portal.

The basis of the specific regulatory action should be the recommendation devised by the Measure Media Analysis Workshop [Mérték mediaelemző Műhely] and the Independent Media Centre [Független mediaközpont][7] .

The promotion of fact-based social dialogue must be the starting point of the media regulation concept. This means, firstly, the requirement for diverse, plural media provision – which is, in principle, laid down in the Constitution – and secondly, a reflexive understanding of their role, which may help reduce the rigid 'cold civil war' political opposition in Hungary, which has existed for a long time. Of course, this may only be achieved in the longer term and, in addition to making the field of politics more balanced, we attach a key role to education.

We recommend that both the scope of regulation and the powers of the authority be reduced. Besides the general limits of civil and criminal law, the explicit regulation of media content is only required in the cases clearly provided for in European Union law. Regulation by the authorities based on sanctions could be replaced by self-regulation, and consequently, after some time, media content in Hungary may become more balanced. An ombudsman-like institution would be a suitable body to discuss the ethical, business and professional issues of diverse media.

The media authority itself must be either completely wound up or radically decentralised with limited discretion, as compared with the current situation. A significant part of the tasks performed

[7] Reconsidered publicity. Media regulation concept (ed. Gábor Polyák and Ilona Móricz), 2014 (http://mertek.eu/2014/02/25/ujragondolt-nyilvanossag-mediaszabalyozasi-koncepcio/).

by the media authority must be transferred to other authorities, the media ombudsman of the state, or self-regulating organisations.

It may be worth substantially curtailing the powers of the media authority under competition law. Good regulations are based on predictability. It would be worth organising frequency applications in a procedure that is simpler than today and that takes into account objective criteria. Decisions on market entry and expansion, which have perhaps the largest influence on the operation of the media sector, must be taken by a body that reflects the pluralism of society. Instead of a permanently-operating body, an organisation with ad hoc meetings may also be considered (as is the case with the Election Committee).

The regulation of the provision of public service broadcasting may be carried out in a multi-level system, in which the production of entertainment content and news are separated from each other in order for the latter not to become financially dependent on the former. Furthermore, the structure of the supply of public service broadcasting content, the proportion of content types, the number of required platforms and channels, and the financing structure must be clarified. The commitment of those working in public service broadcasting to providing balanced information may be the most important guarantee against political pressure in the longer run.

5.3 Recommendations to strengthen the accountability of public power

5.3.1 Protection of whistleblowers[8]

When whistleblowers signal misuse or corruption to the authorities, supported with details, they in fact collect information that should be obtained by the authorities. Through their actions they formally violate the provisions of the law because they typically ferret out information which is protected by companies and state bodies and make it public or disclose it to the authorities. Although their activity has an ethical goal, states are usually more afraid of the infringement of their own information-gathering monopoly than leaving corrupt conduct unprosecuted. Therefore, regulations[9] that provide actual protection to whistleblowers are rare. Although Hungary has been guaranteeing the protection of whistleblowers in a separate Act[10] for nearly a decade on paper, it is not one of the countries which protect them.

Among other things, prohibiting the legal prosecution of whistleblowers and protecting them from discriminatory measures are commonly mentioned among the minimum requirements for efficient whistleblower protection. According to the former, calling whistleblowers to account for typically confidentiality-breaching conduct without which they cannot reveal corruption-related information must be prohibited. The latter expects, firstly, the state to rate the discriminatory measures against both whistleblowers and their relatives, other people living in the same household and their dependants (loss of employment, decrease in income, termination of supply contract, etc.). Secondly, the state must also actively protect whistleblowers: for example, it must

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[8] With respect to what we wrote about the protection of whistleblowers, we rely on the position taken by TI Hungary on Act CLXV of 2013 (https://transparency.hu/wp-content/uploads/2013/05/%C3%89szrev%C3%A9telek-a-k%C3%B6z%C3%A9rdek%C5%B1-bejelent%C3%A9sekr%C5%91l-sz%C3%B3l%C3%B3-t%C3%B6rv%C3%A9ny-tervezet%C3%A9re.pdf).

[9] According to the research report entitled*Whistleblowing in Europe – Legal Protections for Whistleblowers in the EU* published by Transparency International on 5 November 2013, among the European Union Member States, whistleblower protection regulations are satisfactory in the United Kingdom, Romania, Slovenia and Luxemburg, while regulation is partial in Hungary (http://files.transparency.org/content/download/697/2995/file/2013_WhistleblowingInEurope_EN.pdf). The United States of America can be considered the 'motherland' of whistleblower protection regulations, and they have, more recently, further strengthened their system of protection measures by putting into force the Sarbanes-Oxley Act in 2002.

[10] See Act CLXIII of 2009 and Act CLXV of 2013.

provide them with legal, procedural and financial support and, in some cases, it must also protect them physically. The authorities must be obliged to investigate whistleblowing notifications on the merits.

The current whistleblower protection regulations do not meet these requirements. In the absence of specific rules (legal support, protection of family members, etc.), the protection of whistleblowers remains a mere declaration and the companies and state bodies breaching them risk nothing. The enactment of obstacles to criminal liability has not been carried out either, so whistleblowers continue to be threatened by sanctions if they disclose information that qualifies as formally classified information or economic secrets. In Hungary, a whistleblower who loses their job and livelihood may expect financial support from the state up to the maximum amount of aid provided to those in need, but no help in the form of actual legal, financial or physical protection. Regulations regarding the solutions, which aim to protect corporate whistleblowers, have far fewer gaps because the Act appropriately provides for receiving and investigating whistleblowing notifications in business. However, this is merely a recommendation for companies; therefore, progress in this area is only illusory.

The Whistleblower Protection Act, which entered into force in 2014, introduced just two hopeful solutions. Firstly, it obliged the Ombudsman for Fundamental Rights to operate an anonymous whistleblowing system, and secondly, it made them responsible for investigating whether the authorities, which are otherwise obliged to proceed, failed to meet their obligations. At the same time, it is difficult to determine whether the number of whistleblowing notifications received by the ombudsman would not be several times the 815[11] cases recorded so far if the whistleblower protection regulations indeed encouraged whistleblowing by offering actual protection and effective help. The fate of whistleblowing notifications received by the Ombudsman for Fundamental Rights so far cannot be determined either, nor is it known whether the ombudsman has investigated the whistleblower protection activities of the State authorities and, if so, what findings they reached. Thus the otherwise very important powers, which the ombudsman is entitled to, have certainly not worked in practice.

The introduction of an integrity management system has not improved the situation either, although the Government Decree regulating it[12] obliges the administrative bodies – at least in principle – to formulate internal rules governing the receipt and investigation of indicators of corruption. However, the decree regulating the integrity management system has failed to define minimum requirements; accordingly, the deficiencies of whistleblower protection are not remedied by the rules, if any, of the administrative organisations either. The tasks relating to the integrity management system are carried out in practice by integrity advisors appointed from among the employees of administrative organisations. Although their responsibilities may also include the investigation of indicators of corruption, the regulations do not lay great emphasis on enabling the integrity advisors to act efficiently. For example, there is no guarantee that the integrity advisor is independent and may not be instructed during their investigations, while it is also not prohibited to assign the responsibilities of the data protection officer, equality officer or disciplinary commissioner to the integrity advisor. Thus, the decree regulating the rules of integrity management primarily demonstrates the limited extent to which the Government's action against corruption can be taken seriously.

One may only assume, regarding the current whistleblower protection system, that, at the very best, the Government has completely misunderstood both the essence of whistleblowing and the solutions for protection needed. The non-functionality of Hungary's institutional whistleblower

[11] https://www.ajbh.hu/kozerdeku-bejelentes-publikus-kivonat.
[12] Government Decree No 50/2013 of 25 February 2013)

protection system is demonstrated, firstly, by research revealing the strikingly low willingness of Hungarian citizens to engage in whistleblowing, and secondly, the fact that while it was of adopting and enforcing the Whistleblower Protection Act, the state instituted criminal proceedings against András Horváth, a former employee of the tax authority who had exposed the misuse of funds. According to the data of a survey prepared by TI Hungary in 2013[13], four years ago only 30 out of 100 Hungarian citizens would have notified the authorities of corruption they had detected. The study repeated in 2016[14] revealed further deterioration: the new survey established that only 21 out of 100 citizens would notify state bodies of corruption. Both research studies showed that more or less half of people would fail to act because they do not trust the actual investigation of their whistleblowing notifications and because they are afraid of getting into trouble for approaching the authorities.

In order to increase whistleblower protection, we are making the following specific recommendations:

1. Real protection must be provided to whistleblowers and other people connected to them (their relatives, other people living in the same household, their dependants, etc.). Taking discriminatory measures (loss of employment, demotion or downgrading at the workplace, termination of supplier contract, etc.) against any person from this group due to whistleblowing must be prohibited.

2. In respect of prohibited discriminatory measures, the burden of proof must be reversed, i.e. if a discriminatory measure is taken, the instigator must prove that it is not taken due to whistleblowing.

3. Real protection must include physical protection if necessary and proportional financial support for a period of reduced income due to being subjected to an otherwise prohibited discriminatory measure.

4. Through the regulation of obstacles to criminal liability, whistleblowers must be exempted from the consequences of their formally unlawful conduct relating to bona fide whistleblowing by them, performed in order to obtain information required for performing whistleblowing (misuse of classified information, violation of various non-disclosure rules, etc.).

5. It is necessary to regulate the obligation to investigate whistleblowing notifications, among other things, by prescribing that whistleblowing notifications made public through press information and made anonymously must also be investigated.

The Ombudsman for Fundamental Rights may remain in charge, with enhanced powers, of protecting whistleblowers. In respect of whistleblower protection, the ombudsman's investigative powers must also be extended to the courts, all organisational units of the public prosecutor's offices and autonomous administrative bodies. The impermissible opportunity for a state body, misusing its power and denying the public nature of any whistleblowing notifications received, to become exempt from the obligation to apply the requirements for whistleblowing notifications, must be expunged. This can be achieved chiefly by investing the Ombudsman for Fundamental Rights with enhanced investigative powers and by the ombudsman taking a more active approach than has been taken so far.

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[13] https://transparency.hu/adatok-a-korrupciorol/globalis-korrupcios-barometer/gcb-2013/

[14] Petra Burai and Gyula Mucsi: Global Corruption Barometer 2016 – The attitudes of the public towards corruption in Hungary (Transparency International Hungary, 2016), pp. 8-11. (https://transparency.hu/wp- content/uploads/2016/11/Globalis-Korrupcios-Barometer-2016-Jelentes.pdf).

At the same time, TI Hungary still does not consider it necessary to set up a new state authority for handling whistleblowing notifications. The number of organisations fighting corruption and misuse is already very high, and their powers are typically regulated accordingly. A significant number of corrupt acts usually remain unprosecuted because there is no willingness to actually apply the powers. This deficiency should be remedied by exercising existing rights rather than by establishing another authority.

5.3.2. Lobbying regulations[15]

Lobbying, i.e. the assertion of business and individual interests, is a legitimate activity which, in the case of appropriate regulations and proper transparency, strengthens the firm, professional basis of decision-making by public authorities and businesses. Therefore, it is not necessarily the case that lobbying aims to unduly influence decisions and, as such, is synonymous with corruption. Although it is far from alone in the European Union in this regard, Hungary does not exercise transparency with lobbying either. Whilst it is undoubtedly true that there have been attempts to make the interest-enforcement process traceable, they have proven to be ineffective in practice.
In Hungary, lobbying was regulated for the first time by Act XLIX of 2006 (the 'Act on Lobbying'), which prescribed the voluntary registration of lobbyists and the disclosure of the lobbying relationships of public organisations. Violation of the rules was threatened by fines but, due to the voluntary nature of registration, the Act became easy to evade. It is no wonder that only 600 lobbyists have registered, while industry players considered the regulations unsuccessful, and the general experience was that the Act did not make lobbying more transparent at all. The Government, which took office in 2010, responded to the problems that existed not by remedying the deficiencies and introducing additional disclosure requirements but by repealing all lobbying regulations.

As a result of the lack of regulations, no institutional procedures have been established for politicians to accept and handle initiatives taken by civil society actors, experts in various policy areas or business operators, as the case may be, which require regulations or other public-authority decisions. This not only increases the democratic deficit of public and policy decisions but also the probability of making errors since, in many instances, it results in the most elementary facts and professional considerations being disregarded.

The fact that the Government has added to the Decree regulating the integrity management system a few provisions relating to liaison with lobbyists does not make up for the missing lobbying regulations. Under the integrity management system intended to implement the protection of whistleblowers (which is, incidentally, ineffective in practice), government officials are obliged to indicate to their superiors in advance if they plan to meet with a lobbyist. The information must also include the subject of the meeting with the lobbyist, and the result of the meeting must also be reported on. However, citizens learn nothing about any of this because the information is not made public; instead it passes to the head of the state administrative organisation.

In order to make lobbying transparent, we recommend the following measures:

1. In order to provide appropriate access to government information, our recommendations made in order to ensure public access to information of public interest in the scope of freedom of

[15] In reaching our findings and making our recommendations about lobbying regulations, we relied on the studies previously prepared on the subject by TI Hungary. See: Martin, József Péter and Miklós Ligeti: The Lobbying Context: Party State Capture and Crony Capitalism, in: Bitonti, A. and P. Harris (eds.): *Lobbying in Europe*, Pelgrave Macmillan; *and* Bartha, Attila: Lifting the Lid on Lobbying: National Report of Hungary – Lobbying in an Uncertain Business and Regulatory Environment (https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of- Hungary.pdf).

information must be implemented. In addition, the scope of the various categories of secret (for example, trade secret, bank secret, other economic secret and classified information) must be limited to the minimum possible.

2. With regard to the previous regulatory failures, new lobbying regulations must be devised which prescribe the disclosure of certain information relating to the relationship between public decision-makers and lobbyists who assert their interests (number and dates of contacts, names of negotiating parties, etc.).

3. In order to consistently apply the lobbying regulations, public decision-makers must be obliged to prepare reports on the lobby considerations encountered when shaping their decisions.

4. Public-authority decision-makers must also produce lobbying reports on how they prepared their decisions, which should include a summary of lobbying contacts and other lobbying interests. The lobbying report must be attached to the draft public decisions; failure to do so must be subject to the consequences of the public law deemed invalid.

5. It must be required that those submitting draft legislation attach a detailed and public document, accessible by anyone, to the draft, which includes who and on what grounds the regulations were initiated and what means of interest-assertion they used in order to draw up the content of the regulations. If this report is not disclosed, the draft must also be subject to the consequences of the public law being deemed invalid.

6. Self-regulation of lobbying may be an effective way of increasing the transparency of participation in decision-making by the state and the government. Thus, market players and the professional and sectoral organisations representing them must be encouraged to apply the means of self-regulation and to also follow the practice of responsible lobbying in general.

7. Natural persons and organisations engaged in asserting their interests (the 'lobbyists') must be obliged to register themselves. A state body, for example the courts, must be put in charge of keeping the lobbying register.

8. Stringent conflict-of-interest rules must be introduced in order to eliminate the possibility of politicians, other public-authority decision-makers and others responsible for public funds taking advantage, by assuming roles in various NGOs, of the influence they have as public leaders without authorisation. Therefore, public leaders in office, and senior officers in companies performing business operations using public funds must be prohibited from participating in the management structures of professional advocacy organisations, sports federations and other NGOs.

5.3.3. Financial disclosure statements[16]

Although legislation requires that the approximately one hundred thousand-strong group of public decision-makers and workers engaged in public fund management make financial disclosure statements at certain intervals, the current regulations are not suitable for making transparent the wealth of those obliged to provide a statement. The system of financial disclosure statements

[16] In reaching our findings and making our recommendations about the system of financial disclosure statements, we relied on the studies previously prepared by TI Hungary on the subject, see: Legal rules applicable to financial disclosure statements (https://transparency.hu/wp-content/uploads/2016/07/policy_paper1_FIN.pdf); Problems relating to operating the system of financial disclosure statements and recommendations for the reform of the system (https://transparency.hu/wp-content/uploads/2016/07/policy_paper2_FIN.pdf); Minimum content of financial disclosure statements (https://transparency.hu/wp- content/uploads/2016/07/policy_paper3_FIN.pdf).

neither provides actual transparency nor allows their wealth to be traced in proportion to their lawful income, nor does it provide for real sanctions against those breaching the rules. The inexplicable wealth of members of parliament in the spotlight of public attention, and other senior public officials, generally gives rise to scandals from time to time. The lack of knowledge regarding the real reasons for wealth attainment continuously undermines the integrity of the members of the political class, while the poor regulations and the practice – not infrequently hypocritical – based on it also carry a significant risk of corruption.

Therefore, in the interest of real transparency and calling the officials to account on the merits, the system of financial disclosure statements needs to be renewed as follows:[17]

1. Electronically-completed and electronically-readable, searchable and comparable financial disclosure statements.

2. A single, electronic, public database of financial disclosure statements, in which all financial disclosure statements completed by officials during their mandate are accessible.

3. In the case of political leaders (members of parliament, members of the government, under-secretaries of state and public-authority leaders), the financial disclosure statements of their relatives (those living in the same household as the person making the statement) should also be public.
4. Officials should give an account, in the financial disclosure statement, of the sources from which they acquired the assets stated in the statements.

5. The financial disclosure statement should include all positions assumed by political leaders in all non-governmental or economic organisations.

6. The tax authority should verify the financial disclosure statements and should automatically compare them to the tax returns of the officials making the statements.

7. A mandatory wealth audit must be conducted to reveal the inexplicable accumulation of wealth by officials obliged to make financial disclosure statements.

8. A breach of the obligation to make a financial disclosure statement should be punishable as an independent offence. Whoever makes a financial disclosure statement with false or untrue content or who does not make a financial disclosure statement should be subject to imprisonment and a prohibition from working for a public authority or an organisation where decisions on the use of public funds are made.

5.3.4. Rehabilitation of NGOs under attack

Restoring the operation of the rule of law and increasing democracy are unimaginable without the withdrawal of specific government measures aimed against certain civil society organisations and without stopping incitement against NGOs in the government's crosshairs. Initially, the Government wanted to embitter the everyday life of NGOs (i.e. foreign organisations and the foreign press) that had been successfully criticising the operation of, and decisions made by, state authorities.[18] The relevant measures also include investigations by the tax authority, investigating

[17] The recommendations were made on the basis of The civilians' 12 points regarding financial disclosure statements jointly published by TI Hungary, K-Monitor and Átlátszó.hu in 2014 (http://transparency.hu/A_civilek_vagyonnyilatkozati_12_pontja).
[18] The Eötvös Károly Institute, the Hungarian Helsinki Committee [Magyar Helsinki Bizottság], the Association for the Rights to Freedom and TI Hungary summarised the government measures aimed against certain players in the civil society sector. The

authorities and other investigations undertaken on questionable grounds, continuous rhetorical attacks and targeted smear campaigns, freezing of cooperation and discriminative rules.

We consider the Act, which also orders NGOs, using support from abroad, to register separately, to be a discriminatory regulation[19.] It clearly follows from the provisions of the Act that the Government aims to denounce as many NGOs which take a critical stance as possible as receiving support from abroad. To this end, the Act also defined any financial support from funds, managed by or on behalf of the European Union, as foreign funds. TI Hungary has requested that the Constitutional Court repeal this Act in full, because we are convinced that the regulations violate the fundamental rights attached to the inviolability of privacy, the freedom to establish organisations, the freedom of expression and of the press, as well as equality before the law and prohibition of discrimination, which are guaranteed by the Fundamental Law.[20] We consider the recently-published bill known as the 'Stop Soros' legislation package to be a discriminative regulation.[21] The proposed regulations go beyond the verbal condemnation of NGOs receiving support, defined as coming from abroad, and would, among other things, in practice deprive these organisations of their public benefit status.

Discriminative regulations enable the Government to undermine the legitimacy of NGOs engaged in activities which are unpleasant for those in power[22] and, at the same time, hold out the prospect of eliminating their organisations and finances.

An analysis of the Government's NGO policy would be beyond the bounds of this study and will therefore not be undertaken. We recommend only that the Government create an equitable regulatory and financing environment which provides identical opportunities and equal conditions to NGOs. The pacification of the hostile atmosphere created by the Government against NGOs requires a number of measures, of which we will recommend four. As an initial step, the Act called the 'Act on establishing the transparency of organisations supported from abroad', but in fact the 'Act denouncing certain NGOs', must be repealed.[23] As a second step, the Bills published as the 'Stop Soros' legislation package must be withdrawn. As a third step, László Csizmadia, head of the fake NGO called Civil Unity Forum [Civil Összefogás Fórum] ('GONGO'), which operates as the extended arm of the Government and the governing parties, must be removed from the position of Chair of the Council of the National Cooperation Fund, which assesses applications that provide operational support to NGOs. And as a fourth step, the National Cooperation Fund itself should also be wound up and should be replaced by the provisions of Act L of 2003 on the National Civil Fund Programme.

5.3.5. Transparency of the State budget[24]

compilation edited and regularly updated by the Hungarian Helsinki Committee can be accessed here: https://www.helsinki.hu/en/timeline-of-governmental-attacks-against-ngos/.

[19] Act LXXVI of 2017

[20] The complaint of TI Hungary under constitutional law can be found here: https://transparency.hu/wp-content/uploads/2017/09/20170920_TI_alkjogpanasz.pdf.

[21] http://www.kormany.hu/download/c/9a/41000/STOP%20SOROS%20T%C3%96RV%C3%89NYCSOMAG.pdf#!DocumentBrowse
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[22] With the registration of NGOs deemed to be supported from abroad, the Government has even overshot the original goal, since a number of organisations engaged in activities indifferent to the Government from a political point of view have also been included in this register. The list of NGOs deemed to be supported from abroad and opting for registration can be accessed here: http://civil.info.hu/kulfoldrol-tamogatott-civil-organisations.

[23] Act LXXVI of 2017

[24] In reaching our findings and making our recommendations about the transparency of the State budget, we rely on the content of the study Transparency of the budget system by Balázs Romhányi, in: What do we choose? Transparency of the institutional system and the State budget in Hungary, pp. 21-41.

The lack of budgetary transparency makes the operation of democracy difficult but is also a disadvantage in the international competition for foreign capital. The transparency of Hungary's budgetary system is considered weak not only by European standards but also worldwide: Hungary scores only 40 on a 100-point scale classifying budgetary transparency (Open Budget Index).

The foundations of the lack of transparency go back to the pre-regime-change period, but no government has felt the need to radically change it since. The irresponsibility of the budgetary policy between 2001 and 2006 was made obvious by the budget deficit, which was high and, in the two election years, extremely high (over 9%) by international standards. The lack of budgetary transparency and the continuous hiding and manipulation of the current budget information had a key role in destroying credibility and maintaining an irresponsible economic policy.

Although the budgetary policy followed since 2010 kept the current government balance down at around 3% of the GDP 3, the price to pay was nationalisation of the assets of the private pension funds and contributions and other decisions that make budgetary processes unsustainable either directly or by destroying medium and long-term growth prospects. The persistence of this irresponsible economic policy assumes a lack of transparency of the budgetary system and in particular a lack of medium and long-term projections and impact assessments, and a lack of transparency in how decisions are prepared.
Both of the above periods substantiate that the establishment of transparency is the most efficient method for ensuring sustainability. A government that does not ensure transparency does not actually aim at sustainability either, and unsustainable promises can obviously not be credible. Transparency is important not for itself but because it results in better government decisions, helps the private sector adapt and reduces the expected risk premium. The relevant budget information on policy-making and implementation of decisions by the government must be transparent for the past, the present, and for future plans alike.

(http://www.mitvalasztunk.hu/images/MitValasztunk_Az_intezmenysystem_es_a_koltsegvetes_atlathatosaga_Magyarorszagon.pdf)
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